

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

CLYDE JAMERSON,

Defendant.

Case No. 04-cr-40022-PJH-1

Case No. 15-cr-290-PJH-7

**ORDER DENYING REQUEST FOR
APPOINTMENT OF COUNSEL**

Before the court is defendant Clyde Jamerson's request for appointment of counsel in the above-entitled cases, following sentencing and entry of judgment in both. He asserts that he is "filing a 2255 for ineffective counsel." However, he has not in fact filed a motion to vacate, set aside, or correct the sentence under 29 U.S.C. § 2255.

There is no constitutional right to counsel in a collateral, post-conviction § 2255 proceeding. See U.S. v. Fabricant, 2016 WL 3390841 at *1 (9th Cir. June 20, 2016) (citing Sanchez v. U.S., 50 F.3d 1448, 1456 (9th Cir. 1995)). Under 18 U.S.C. § 3006A(2)(B), a § 2255 petitioner may be appointed CJA representation when the court "determines that the interest of justice so require." But in the absence of a § 2255 motion, the court would be unable to determine whether appointment of counsel is warranted, and defendant has not made any such showing.

In addition, defendant has filed a notice of appeal in each of the two cases. Generally, "the filing of a notice of appeal divests a district court of jurisdiction over those aspects of the case involved in the appeal." Stein v. Wood, 127 F.3d 1187, 1189 (9th Cir.

1 1997). Thus, until the Ninth Circuit has taken some action with regard to defendant's
2 appeals, this court lacks jurisdiction over any challenge to the sentencing and judgment
3 in either case, and defendant cannot file a § 2255 motion until the appeals are
4 exhausted.

5 In accordance with the foregoing, defendant's request for appointment of counsel
6 is DENIED.

7
8 **IT IS SO ORDERED.**

9 Dated: October 17, 2016



PHYLLIS J. HAMILTON
United States District Judge